
OFFICE OF THE ATTORNEY GENERAL
Official Opinion No. 2008-1

January 10, 2008

OFFICIAL OPINION 2008-1

The Honorable Luke Kenley
Indiana State Senator
200 West Washington Street
Indianapolis, IN 46204

RE: Applicability of the Indiana Tort Claims Act

Dear Senator Kenley:

You have asked if the Lake County Convention and Visitors Bureau ("LCCVB") is a governmental entity covered by the Indiana Tort Claims Act ("ITCA").

Brief Answer

The LCCVB is a "governmental entity" subject to the provisions of the Indiana Tort Claims Act.

Legal Analysis

The ITCA, codified at Indiana Code chapter 34-13-3, is the General Assembly's expression of the circumstances under which the state and its political subdivisions may be held liable in tort. As recently observed by the Indiana Court of Appeals, ITCA "operates as an unequivocal statement of Indiana's consent to be sued in tort *provided certain qualifications - including notice - are fulfilled.*" *Oshinski v. N. Ind. Commuter Transp. Dist.*, 843 N.E.2d 536, 544 (Ind. App. 2006) (emphasis added).

Our legislature requires protection under the ITCA be given to "governmental entities." Ind. Code § 34-13-3-4. A "governmental entity," for the purposes of ITCA, "means... the state or a *political subdivision* of the state." Ind. Code § 34-6-2-49 (emphasis added). For purposes of the ITCA, the term "political subdivision" has been broadly defined under section 34-6-2-110 and includes a "separate municipal corporation." Ind. Code § 34-6-2-110(5).

"Separate municipal corporation" is not further defined under the ITCA. In determining the meaning of statutory language, we note that statutes relating to the same subject matter are "in *para materia* and should be construed together so as to produce an harmonious statutory scheme." *Orndorff v. New Albany Hous. Auth.*, 843 N.E.2d 592, 595 (Ind. App. 2006).

The court in *Orndorff* considered the definition of "municipal corporation" under Title 36 when ascertaining its meaning for the ITCA. *Id.* "'Municipal corporation' means unit, school corporation, library district, local housing authority, fire protection district... or *other separate local governmental entity that may sue and be sued.*" *Id.* (quoting Ind. Code § 36-1-2-10 (emphasis added)). Furthermore, the term "separate municipal corporation" is similarly defined at section 34-6-2-86 for the purpose of public interest lawsuits brought under chapter 34-13-5. Under that section, "separate municipal corporation" means a "local subdivision of the state" or a "*public instrumentality or public corporate body created by state law*, including but not limited to cities, towns, townships... *and any other local public instrumentality or corporation that has the right to sue and be sued*" Ind. Code § 34-6-2-86 (emphasis added).

The LCCVB is a public instrumentality created by state law under section 6-9-2-3(b):

A convention and visitor bureau having fifteen (15) members is created to promote the development and growth of the convention, tourism, and visitor industry in [Lake] county.

The LCCVB can sue and be sued. Ind. Code § 6-9-2-4(a)(2). All of its members are appointed by elected officials at the municipal, county or state level. Ind. Code § 6-9-2-3 (c) to (f). LCCVB members must take an oath of office which must be filed with the clerk of the circuit court. Ind. Code § 6-9-2-3(l). The LCCVB is funded, in substantial part, by revenues derived from lodging tax authorized by section 6-9-2-1 and transferred to the LCCVB by the Lake County Treasurer. Ind. Code § 6-9-2-2(b). Its budget must be submitted to the Indiana

Department of Local Government Finance, and "[a]ll money in the bureau's funds shall be deposited, held, secured, invested, and paid in accordance with statutes relating to the handling of public funds. The handling and expenditure of money in the bureau's funds are subject to audit and supervision by the state board of accounts." Ind. Code § 6-9-2-4(b) and (c).

Moreover, the LCCVB has been granted the one power that is unique to governmental entities - the power of eminent domain:

The bureau may... exercise the power of eminent domain to acquire property to promote and encourage conventions, trade shows, special events, recreation, and visitors within the county.

Ind. Code § 6-9-2-4(a)(9).

Given the foregoing statutory framework, the LCCVB meets all definitions of a "separate municipal corporation" under the ITCA. See *generally Orndorff*, 843 N.E.2d at 595 (holding local housing authority created pursuant to an act of the General Assembly "comports with the definition of a municipal corporation because it is a public instrumentality created by state law, and has the right to sue and be sued"). The LCCVB is created by state law and has the right to sue and be sued. It has the uniquely governmental power of eminent domain and it is authorized by statute to receive and spend tax revenues.

The LCCVB is more clearly a "governmental entity" than many entities which our courts have analyzed and held, as a matter of law, to be subject to the ITCA. For example, the Indiana Supreme Court underwent a comprehensive analysis and ultimately determined that private individuals comprising a volunteer fire department were endowed by the state with power or functions that were uniquely governmental in nature and thus subject to ITCA. *Ayres v. Indian Heights Vol. Fire Dept., Inc.*, 493 N.E.2d 1229, 1235 (Ind., 1986). The Indiana Supreme Court has also held that a private nonprofit agency designated by the Governor as a community action agency was a governmental entity within the ambit of the ITCA. *LCEOC, Inc. v. Greer*, 735 N.E.2d 206, 208 (Ind. 2000). More recently, the Indiana Court of Appeals *sua sponte* held as a matter of law that the privately owned Indianapolis Water Company, operating by the authority and at the will of the City of Indianapolis, should be considered a governmental entity for the purpose of ITCA. *Metal Working Lubricants Co. v. Indianapolis Water Co.*, 746 N.E.2d 352, 359 (Ind. Ct. App. 2001).

Conclusion

It is the opinion of this Office that the Lake County Convention and Visitors Bureau created by the General Assembly at Indiana Code section 6-9-2-3 (b) is a "governmental entity" under the Indiana Tort Claims Act and is entitled to all of the immunities, limitations on liability, and notice requirements set forth in that Act.

Sincerely,

Stephen Carter
Attorney General

Susan W. Gard
Deputy Attorney General

Posted: 01/23/2008 by Legislative Services Agency
An [html](#) version of this document.